

FOIA s.44 – Absolute exemption: prohibitions on disclosure

Commission for Local Administration in England v IC

EA/2007/0087

11th March 2008

Cases:

Facts

A request was made, in effect, for the contents of the complaint file created by the Commission for Local Administration (“CLA”) when one of its Local Commissioners investigated a complaint of maladministration by a public authority. It was refused on the basis that s.32(2) of the Local Government Act 1974 (“LGA”) prohibited disclosure of any information “...*obtained by a Local Commissioner, or any officer of either Commission...*” in the course of, or for the purpose of, the investigation of a complaint. The information requested was therefore said to be exempt from the obligation of disclosure imposed by section 1 of FOIA by virtue of s.44.

The IC had decided that the statutory prohibition under LGA s.32(2) applied to the majority of the information withheld by the CLA but that certain documents, which were listed separately, did not fall within it because they contained information that did not make reference to the nature of the complaint or information obtained as a result of the investigation. He therefore ordered that those documents should be disclosed.

Findings

The Tribunal considered that the plain meaning of the words “...obtained...in the course of or for the purpose of an investigation...” was that the statutory prohibition applied only to information from a source external to the CLA and not to material generated within the Commission, provided that it did not disclose information about the subject matter of the complaint in question. It followed that the CLA should disclose documents such as:

- internal memoranda, prepared by CLA staff, dealing with the mechanics of the investigation, but making no reference to the matters complained of or any facts or matters that came to light during the investigation;
- communications between the CLA and the public authority dealing with arrangements for the handling of the investigation, but which made no reference to what was involved in the investigation;
- file notes which dealt only with matters such as arrangements for meetings or reports on the progress of the investigation.

The Tribunal considered that the burden placed on the CLA in extracting this type of material was no greater than that placed on all public authorities under the regime created by the FOIA. There was a countervailing benefit in that (even though in this case the information to be disclosed was quite neutral), in other cases disclosure might reveal that the procedures followed by those conducting an investigation had fallen

short of the required standard. In those circumstances the distinction, which s.32(2) of LGA creates, between the subject matter of an investigation (to be kept secret) and the processes followed in conducting it (a valid subject matter for public scrutiny) would have served a useful purpose.

An alternative argument, to the effect that information would be “obtained” by a Local Commissioner or a member of the CLA’s staff whenever documents recording it were passed between individuals within the CLA’s own organisation, was rejected because the Tribunal believed that it was based on a mis-reading of LGA s.32(2).

Conclusion

The Tribunal dismissed the Appeal and directed that the Decision Notice (including the order for partial disclosure) should stand.